

Journal of the Senate

TWENTY-NINTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Friday, February 16, 2007—8:00 a.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-five senators present.
Senators Barnett, Betts, Donovan, Gilstrap and V. Schmidt were excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

There are short verses throughout the Bible that give us encouragement when we feel discouraged. One of them is I John 5:4b: "This is the victory that has overcome the world, even our faith."

When what we hoped would happen,
And it has not come to pass;
Keep me from giving up, O God;
My faith will this surpass.

When I'm caught in troubled waters,
And it looks like I might drown;
Rescue me and let me know
My faith won't let me down.

When people I have trusted
Turn their backs on me,
Pick me up and convince me
My faith's the victory.

When the opposition's winning
And it seems I must succumb;
Raise me up and assure me
My faith will overcome.

I pray in the Name of Jesus Christ,

AMEN

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 355, An act repealing K.S.A. 2006 Supp. 75-53,119; concerning the Kansas foster child educational assistance act, by Committee on Ways and Means.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills and resolutions were referred to Committees as indicated:

Assessment and Taxation: **Sub HB 2171**.

Education: **HB 2093, HB 2159**.

Judiciary: **SCR 1607, SCR 1608; HB 2010**.

Public Health and Welfare: **SB 354**.

Utilities: **Sub HB 2278.**

Ways and Means: **SB 352, SB 353.**

REFERRAL OF APPOINTMENTS

The following appointment made by the Governor and submitted to the senate for confirmation, was referred to Committee as indicated:

State Board of Tax Appeals, Member:

Bruce Larkin, effective upon the date of confirmation by the Senate to fulfill an unexpired term of 4 years.

(Assessment and Taxation)

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 244** be amended on page 2, in line 26, by striking all following "after"; in line 27, by striking "thereof" and inserting "one of the following dates, whichever is applicable:

(1) If the action authorized by section 3, and amendments thereto, is brought in Kansas state court, then amendments by this act to this section shall be applicable from and after the date the Kansas supreme court upholds the constitutionality thereof;

(2) if the action authorized by section 3, and amendments thereto, is brought in federal court, then amendments by this act to this section shall be applicable from and after the date the judgment of the court upholding the constitutionality thereof becomes final";

Also on page 2, in line 40, by striking all following "3."; by striking all in lines 41 through 43;

On page 3, by striking all in lines 1 and 2 and inserting "In accordance with K.S.A. 75-702, and amendments thereto, the attorney general shall seek judicial determination of the constitutionality of section 1 and amendments thereto. If the action authorized by this section is brought in a district court of this state, then the judgment of that district court shall be appealed directly to the Kansas supreme court as a matter of right.

Sec. 4. K.S.A. 60-2102 is hereby amended to read as follows: 60-2102. (a) *As of right.* Except for any order or final decision of a district magistrate judge, the appellate jurisdiction of the court of appeals may be invoked by appeal as a matter of right from:

(1) An order that discharges, vacates or modifies a provisional remedy.

(2) An order that grants, continues, modifies, refuses or dissolves an injunction, or an order that grants or refuses relief in the form of mandamus, quo warranto or habeas corpus.

(3) An order that appoints a receiver or refuses to wind up a receivership or to take steps to accomplish the purposes thereof, such as directing sales or other disposal of property, or an order involving the tax or revenue laws, the title to real estate, the constitution of this state or the constitution, laws or treaties of the United States.

(4) A final decision in any action, except in an action where a direct appeal to the supreme court is required by law. In any appeal or cross appeal from a final decision, any act or ruling from the beginning of the proceedings shall be reviewable.

(b) The appellate jurisdiction of the supreme court may be invoked by appeal as a matter of right from a preliminary or final decision in which a statute of this state has been held unconstitutional as a violation of Article 6 of the Kansas constitution pursuant to K.S.A. 2005 Supp. 72-64b03, and amendments thereto. Any appeal filed pursuant to this subsection shall be filed within 30 days of the date the preliminary or final decision is filed.

(c) *Other appeals.* When a district judge, in making in a civil action an order not otherwise appealable under this section, is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the judge shall so state in writing in such order. The court of appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within 10 days after the entry of the order under such terms and conditions as the supreme court fixes by rule. Application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or an appellate court or a judge thereof so orders.

(d) The appellate jurisdiction of the supreme court may be invoked by appeal as a matter of right pursuant to section 3, and amendments thereto, from a preliminary or final decision in which a statute of this state has been held unconstitutional as a violation of the Kansas constitution. Any appeal filed pursuant to this subsection shall be filed within 30 days of the date the preliminary or final decision is filed.”;

And by renumbering the remaining sections accordingly;

Also on page 3, in line 3, by striking “is” and inserting “and 60-2102 are”;

On page 1, in the title, in line 13, following “21-4015” by inserting “and 60-2102”; in line 14, by striking “section” and inserting “sections”; and the bill be passed as amended.

On motion of Senator D. Schmidt the Senate adjourned until 3:00 p.m., Monday, February 19, 2007.

HELEN MORELAND, CAROL PARRETT, BRENDA KLING, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

